

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today
(1) was not written for publication in a law journal and
(2) is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS D. KLINGNER

Appeal No. 95-1908
Application 07/890,620¹

ON BRIEF

Before JOHN D. SMITH, PAK and KRATZ, Administrative Patent Judges.

JOHN D. SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal pursuant to 35 U.S.C. § 134 from the
final rejection of claims 1 through 22.

¹ Application for patent filed May 28, 1992.

Appeal No. 95-1908
Application 07/890,620

Claims 1 and 18 are representative and are reproduced
below:

1. A device discrete from and usable with protective clothing or equipment worn by a user for detecting the breakthrough of the protective clothing or equipment by a contaminant, said device comprising: a reaction pad having obverse and reverse sides, reagent means carried by said reaction pad and responsive to the presence of the contaminant for producing a visible indication, a barrier layer impervious to said reagent means covering said reverse side of said reaction pad, and attachment means coupled to said reaction pad for removably mounting it between the user and the protective clothing or equipment being tested so that in use said obverse side is adjacent to the inside of the protective clothing or equipment for exposure to a contaminant which breaks through the protective clothing or equipment.

18. A method for detecting the breakthrough by a contaminant of protective clothing or equipment worn by a user, said method comprising the steps of: providing a pad having obverse and reverse sides and carrying a reagent responsive to the presence of the contaminant for producing a visible indication, sealing the reverse side of the pad to prevent escape of chemicals therefrom, and removably mounting the pad between the user and the protective clothing or equipment being tested so that the obverse side is adjacent to the inside of the protective clothing or equipment for exposure to a contaminant which breaks through the protective clothing or equipment.

The reference of record relied upon by the examiner is:

Cukier

4,910,803

Mar. 27, 1990

Appeal No. 95-1908
Application 07/890,620

The appealed claims stand rejected for obviousness
(35 U.S.C. § 103) over Cukier.

We cannot sustain the stated rejection.

The subject matter on appeal is directed to a detection device for testing gloves or other protective clothing or equipment for breakthrough by a contaminant such as a hazardous workplace chemical. The claimed device includes a pad carrying a reagent which is responsive to the contaminant for producing a color change. A barrier layer covers the reverse side of the pad to prevent escape of the chemicals, and an attachment means is coupled to the reaction pad for removably mounting the pad between the user and the protective clothing or equipment being tested. The attachment means may take the form of an adhesive strip which is secured to the barrier layer for attachment of the pad either to the skin of the user or to the inside of the glove or other clothing. In use, the obverse side of the pad is adjacent to the inside of the protective clothing or equipment for exposure to a contaminant which may break through the protective clothing or equipment. Importantly, the device is claimed as "discrete from" the protective clothing worn by the user or the

equipment used. In addition to claims to the device, the appeal also presents claims to a method for detecting the breakthrough by a contaminant of protective clothing or equipment which, in effect, provide for the use of the pad which is removably mounted between the user and the protective clothing or equipment. See appealed claims 18 through 22.

As evidence of obviousness of the claimed invention, the examiner relies on Cukier, which, as the examiner correctly states, discloses apparel² (clothing such as gloves or masks or condoms) made up of a composite material having layers of impervious material and a layer which will detect the presence of a bodily fluid. As emphasized by appellant in his brief, however, the claims on appeal define a device which is "distinct from" the clothing worn by the user and we agree that the preambular claim language serves to distinguish the claimed invention from Cukier's apparel.

Even if it is argued that the composite material (i.e., the material ultimately used to form the apparel) disclosed by Cukier may be characterized as a "device" comprising a

² See Cukier at column 4, lines 48-52 and column 6, lines 5 and 6.

reaction pad carrying a reagent means in combination with a barrier layer impervious to the reagent means, such a "device" has no attachment means coupled to a reaction pad for removably mounting the pad between a user and the protective clothing or equipment being tested. Moreover, there is no apparent reason presented why one of ordinary skill in the art would have been motivated to provide such a "device" with an attachment means as claimed. As appellant points out, the presently claimed invention and Cukier are directed to fundamentally different kinds of problems which are usable in different types of applications, and which utilize different operating mechanisms. Accordingly, the stated rejection of the appealed claims cannot be affirmed.

Upon return of this application to the examiner, the examiner should reconsider the record in light of the admissions in the specification at pages 2, line 30 through page 3, line 12 which discuss prior art efforts to measure chemical breakthrough of protective gloves and clothing utilizing cotton or cellulose pads attached under the gloves or clothing to absorb chemicals which breakthrough the protective material. These pads are said to be subsequently

Appeal No. 95-1908
Application 07/890,620

analyzed in a laboratory to determine whether any breakthrough of chemical has occurred and to identify which chemicals have broken through the protective clothing. Accordingly, the prior art pads apparently do not carry reagent means as required by the appealed claimed device. Since Gunderson³ teaches that methods are needed for detecting chemical permeation through gloves and other protective garments in the workplace, the question raised is whether or not one of ordinary skill in the art would have been led to provide the prior art reaction pads with a reagent means responsive to the presence of the contaminant for producing a visible indication for the purpose of instantaneously alerting the wearer that the protective glove or clothing has been breached. We decline to exercise our discretion to impose a new rejection of the appealed claims based on the prior art disclosures discussed above. The examiner should reconsider the record in light of

³ See Gunderson et al (Gunderson) "A Practical Study in Laboratory and Workplace Permeation Testing", APPL. IND. HYG., Vol. 4, No. 12, ppg. 324-329, particularly page 329, December 1989, a copy of which is attached to appellant's brief as Exhibit B.

Appeal No. 95-1908
Application 07/890,620

these disclosures and, if appropriate, restate a rejection of
the claims on appeal.

The decision of the examiner is reversed.

REVERSED

	JOHN D. SMITH)	
	Administrative Patent Judge)	
)	
)	
)	
	CHUNG K. PAK)	BOARD OF
PATENT	Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
	PETER F. KRATZ)	
	Administrative Patent Judge)	

JDS/cam
Emrich & Dithmar
300 South Wacker Drive
Chicago, IL 60606